



INTERIOR BOARD OF INDIAN APPEALS

Alta Kane Rogers v. Acting Deputy Assistant Secretary -
Indian Affairs (Operations)

15 IBIA 13 (10/16/1986)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ALTA KANE ROGERS

v.

ACTING DEPUTY ASSISTANT SECRETARY--INDIAN AFFAIRS (OPERATIONS)

IBIA 86-25-A

Decided October 16, 1986

Appeal from a decision of the Acting Deputy Assistant Secretary--Indian Affairs (Operations) concerning land assignments on the Bishop Indian Reservation, California.

Vacated and remanded.

- 1 Board of Indian Appeals: Jurisdiction--Indians: Tribal Powers: Generally

The Board of Indian Appeals has jurisdiction over decisions issued by Bureau of Indian Affairs officials under Chapter I of 25 CFR. It does not have jurisdiction over decisions made by duly constituted tribal officials or governing bodies.

2. Indians: Law and Order: Tribal Constitutions, Bylaws, and Ordinances

In furthering the doctrines of Indian sovereignty and self-determination, the Department of the Interior has recognized the right of Indian tribes initially to interpret their own governing documents and to resolve their own internal disputes and has given deference to a tribe's reasonable interpretation of its own laws.

3. Bureau of Indian Affairs: Generally--Indians: Law and Order: Tribal Constitutions, Bylaws, and Ordinances

The Bureau of Indian Affairs has the right to interpret tribal law in order to ensure that tribal action in which the Bureau has an interest is consistent with that law.

APPEARANCES: William C. Wunsch, Esq., San Francisco, California, for appellant; Delvin Kane, pro se.

OPINION BY ADMINISTRATIVE JUDGE LYNN

On January 27, 1986, the Board of Indian Appeals (Board) received a notice of appeal from Alta Kane Rogers (appellant). Appellant sought review of a November 16, 1985, decision of the Acting Deputy Assistant Secretary--Indian Affairs (Operations) (appellee) concerning land assignments on the Bishop Indian Reservation, California. For the reasons discussed below, the Board vacates that decision and remands the case to the Bureau of Indian Affairs (BIA) for further considerations.

Background

The Bishop Indian Reservation is one of three reservations set aside for the Owens Valley Paiute-Shoshone Indians. The three reservations, Bishop, Big Pine, and Lone Pine, contain approximately 1,400 acres and were acquired by Executive Order 1496, March 11, 1912, III Kappler, Indian Affairs: Laws & Treaties 677 (1913), and by a land exchange with the City of Los Angeles pursuant to the Act of April 20, 1937, ch. 114, 50 Stat. 70. Title to the three tracts is held by the United States in trust for the Indians of Owens Valley. 1/

Funds were provided for the construction of individual homes and other improvements on the reservations under the Emergency Relief Appropriations Act of 1938, Act of June 21, 1938, ch. 554, 52 Stat. 809, and the Emergency Relief Appropriations Act for Fiscal Year 1941, Act of June 26, 1940, ch. 432, 54 Stat. 611. Trust agreements were entered into between the Commissioner of Indian Affairs and representatives of the three reservations on April 10, 1939, and May 28, 1941, establishing a Board of Trustees (trustees) whose primary responsibility was to control the use of the homes and other improvements constructed with these funds. Ownership of the improvements and lots was not transferred to individual tribal members; instead, use is permitted through land assignments.

By referendum vote on the three reservations, an assignment ordinance was adopted to govern the administration of assignments made by the trustees. The ordinance took effect on April 5, 1962. 2/

On January 13, 1951, Ollie Kane, appellant's father, applied for an assignment of land on the Bishop Indian Reservation. Ollie's application sought a five-acre assignment which he stated would be used to help support his six children: Marilyn, appellant, Doreen, Gerald, Delvin, and Clara. An assignment was approved by the trustees on May 14, 1956, and by the

1/ The Indians of the three reservations are presently recognized by the Secretary of the Interior as three separate entities: the Paiute-Shoshone Indians of the Bishop Community, the Big Pine Band of Owens Valley Paiute Shoshone Indians, and the Paiute-Shoshone Indians of the Lone Pine Community. 51 FR 25115, 25116 (July 10, 1986).

2/ Pertinent parts of this ordinance are set out in the text, infra.

Sacramento Area Director (Area Director) on July 13, 1956. Ollie's assignment encompassed lots 27, 28, 29, 30, 31, and 32 of Block 29 of the January 1960 subdivision map of the Bishop Indian Reservation. This assignment was validated in Article I of the 1962 ordinance.

Ollie died on August 8, 1974. In 1976 Delvin Kane applied for an assignment of lots 27, 28, 29, 30, and 31 of Block 29. By Resolution 102, dated September 16, 1976, the trustees approved his application. BIA, however, returned the resolution to the trustees, without approval, on August 29, 1978, stating that there was a boundary discrepancy and the application sought assignment of more than 2 lots in violation of the 1962 ordinance. The application was eventually changed to seek lots 27 and 28 of Block 29, and was approved by the trustees on December 6, 1983. Also on December 6, 1983, the trustees approved assignment of lot 28, SE 1/4, lot 29, S 1/2, and lot 30, S 1/2, to Clara Kane Angeli. ^{3/} By letter dated September 4, 1984, the Superintendent, Central California Agency, BIA, informed the trustees that the assignments had "been 'Reviewed and considered,' pursuant to the 1962 Ordinance Governing Assignments on the Bishop, Big Pine and Lone Pine Reservations and appear to be in proper order."

This finding was affirmed by the Area Director on February 13, 1985, and by appellee on November 16, 1985. Appellant appealed the November 1985 decision to the Board by notice of appeal received on January 27, 1986. Appellant and Delvin filed briefs on appeal.

Discussion and Conclusions

On appeal appellant argues that the trustees violated the 1962 assignment ordinance by (1) failing to honor her equal preference rights; (2) failing to properly post the applications of Delvin and Clara for the assignments they received; and (3) basing the lot assignments on the Holmes Survey map rather than on the 1960 reservation subdivision map. These are the same arguments appellant has raised throughout this appeal.

[1] It is important at the outset of this discussion to distinguish between actions taken by BIA and those taken by the tribe. This Board has limited jurisdiction to review actions taken by BIA officials under 25 CFR Chapter I. It does not have jurisdiction over decisions made by duly constituted tribal officials or governing bodies. See, e.g., Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978); 43 CFR 4.1(b)(2)(i); Redfield v. Billings Area Director, 13 IBIA 356 (1985); Hawley Lake Homeowners' Ass'n v. Deputy Assistant Secretary--Indian Affairs (Operations), 13 IBIA 276 (1985).

[2, 3] In furthering the doctrines of Indian sovereignty and self-determination, the Department has recognized the right of Indian tribes

^{3/} The approval of the assignment of the entire lot 28 to Delvin, and the SE 1/4 of apparently the same lot to Clara, is not discussed either by the trustees or BIA.

initially to interpret their own governing documents and to resolve their own internal disputes. Even when BIA has been required to interpret tribal laws in order to ensure that tribal action in which the Department has an interest is consistent with that law, it has given deference to the tribe's reasonable interpretation of its own laws. See, e.g., and compare, Kiowa, Comanche & Apache Intertribal Land Use Committee v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 14 IBIA 207 (1986); Benally v. Navajo Area Director, 9 IBIA 284, 89 I.D. 252 (1982); Stands Over Bull v. Billings Area Director, 6 IBIA 98 (1977); Davis v. Commissioner of Indian Affairs, 4 IBIA 228 (1975).

Thus, Board review in this case is limited to determining whether or not appellee's November 16, 1985, decision that the trustees' approval of assignments to Delvin and Clara was "in proper order" is legally correct.

Rather incongruously, appellee's decision first states at page 3 that the issues raised by appellant "as to whether or not the Owens Valley Board of Trustees followed specific procedures, regulations, and rules [4/] in determining land assignments for Delvin Kane and Clara Kane Angeli are matters which must be addressed only by the Governing Board of Trustees and the local Indian Committee." (Emphasis in original.) Appellee then, however, proceeds to consider the merits of each of appellant's arguments, presenting justifications for the trustees' actions that are not reflected in the documentation of that action included in the record.

The Board cannot accept appellee's initial statement that the issues appellant raises can be addressed only by the trustees and Indian committee. The 1939 and 1941 trust agreements entered into by the trustees and BIA each state in section 1 that the emergency relief monies are given to the trustees "in trust * * * for the prosecution of projects to provide relief for members of the Bands in conformity with a program approved by the Office of Indian Affairs." Under the trust agreements all construction, disbursement of funds, and contracts associated with the trust fund must be approved by BIA. Section 10 in both agreements specifically states: "Every assignment or other transfer of improvements erected through the use of the said Trust fund shall be made only in accordance with the program approved by the Office of Indian Affairs."

In furtherance of these trust agreements, the 1962 assignment ordinance provides at page 2 that

[t]he purpose of creating and recognizing the Owens Valley Board of Trustees was to receive and administer funds appropriated under the Emergency Relief Appropriation Act of 1938, for and on behalf of the Owens Valley Paiute-Shoshone Indians, under the direction and approval of the Commissioner of Indian Affairs.

4/ "Procedures, Regulations and Rules Concerning Assignments" is the title of Article II of the 1962 ordinance.

Again, in section B.3, the ordinance states that it is the responsibility of the trustees to “transmit] approved applications to the Area Director for his review and consideration.”

The history of this case itself shows that on August 29, 1978, BIA declined to approve an earlier application for assignment made by Delvin because the trustees' action violated the 1962 ordinance. Similarly, in an October 21, 1981, letter to the trustees, BIA stated at page 1: “The [1962] ordinance is a legal document adopted by the three above noted reservations. We have the obligation of recognizing this document.”

It is thus apparent that the trustees' actions in administering the trust fund and improvements made with it are subject to supervision and review by BIA. Accordingly, the Board holds that BIA has an interest in this tribal action and a responsibility to review land assignments made by the trustees to ensure compliance with the 1962 ordinance. ^{5/} The Board will, therefore, consider the merits of appellant's arguments.

Appellant first argues that the 1962 ordinance required the trustees to consider all of the applications made by Ollie's children and make an equitable division among them. This argument is based on Article II, section D, paragraph 10.d, of the ordinance, which states:

Upon the death of assignee, the assignment becomes available for reassignment to any qualified applicant. Preference rights shall be acknowledged by the Owens Valley Board of Trustees for any qualified members represented in the original assignment or those named as beneficiaries by the assignee. The surviving spouse, if she so elects, shall receive the one-acre homesite, house, along with the adjacent two-acre parcel.

In the event those individuals in the above categories do not qualify for an assignment under terms of this ordinance, the available acreage may be reassigned to any eligible member of the Owens Valley Paiute Shoshone Bands.

Article II, section C, sets forth the eligibility standards for receiving an assignment. These requirements are that an applicant must “[b]e an Owens Valley Paiute-Shoshone Indian, at least twenty-one (21) years old and residing in Owens Valley at the time of making application” and “not be in possession of another assignment or have received an allotment.”

Appellant alleges that paragraph 10.d requires that her application be given equal preference with those of her brother and sisters. She further

^{5/} BIA's role here in reviewing the trustees' decisions distinguishes this case from those in which BIA has acted only as an intermediary by informing interested parties of a tribal decision. See, e.g., Redfield, supra; Potter v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 10 IBIA 33 (1982).

states that BIA improperly held that she was not entitled to an assignment in her own right because she had the use of her husband's assignment, when other husbands and wives had each received different assignments. In support of her second argument, appellant has presented copies of various land assignment documents indicating that in several cases assignments were made to individuals with the same last name. Although no evidence substantiating a marriage between these individuals was presented, the Board believes the documents represent a good faith attempt to show that other husbands and wives have received separate land assignments.

The record here indicates that the trustees may have interpreted the eligibility standard in section C.2 of the 1962 ordinance in a manner different from that set forth in the BIA decisions. The trustees' interpretation is, however, not part of the evidence in this case. In the absence of such evidence, the Board cannot sustain appellee's decision.

Furthermore, although section D, paragraph 10.d, of the ordinance does not specifically state that "equal" preference will be given to all qualified members represented in the original assignment, and appellant has not presented adequate justification for such an interpretation, the Board has no way to determine whether or not the trustees may have interpreted the preference rights provision in this manner. Again, the information necessary to sustain appellee's decision is not in the record.

Appellant's second argument is that the trustees failed properly to post the applications of Delvin and Clara for the assignments they finally received. Instead she alleges that applications made several years earlier were merely altered and approved without posting.

Article II, section A, paragraph 1.a, of the 1962 ordinance states:

The local Indian Committee shall post in a conspicuous place on the reservation all names of applicants and lots applied for for a period of not less than fifteen (15) days before action is taken by the committee. Any voting member of the community wishing to oppose the granting of an assignment may do so in writing or appear before the committee.

The purpose of this provision is clearly to provide notice of an application and an opportunity for persons who might oppose the application to present their views to the committee.

Appellee's decision states that Resolutions 102 and 238, approving the assignments to Delvin and Clara, indicate the applications were properly posted. Appellant contests the factual accuracy of this statement. If appellant is correct, she and any other voting member of the community who might have opposed the applications were denied procedural due process. 6/

6/ The Indian Civil Rights Act requires that Indian tribes in exercising powers of self-government provide equal protection and due process to all

Although under normal circumstances, the trustees' statement would be sufficient to prove posting, it is not sufficient standing alone when specifically attacked. BIA should have inquired about the posting of the applications when the procedural requirement was challenged. 7/

Finally, appellant argues that the assignments to Delvin and Clara were improperly based on the Holmes Survey map rather than on the 1960 reservation subdivision map, as required by Article II, section D, paragraph 10.a(2), of the 1962 ordinance. Appellant has attached to her initial brief page 2 of a document that is apparently the minutes of the December 6, 1983, trustees' meeting. These minutes state:

[Illegible] was read from BIA regarding Delvin Kane's land assignment. BIA states that assignees are limited to 2 lots. Delvin Kane's assignment papers indicate 5 lots. The legal description of combined lots 33 and 34 of Block 29 are not included as part of the application nor is it designated on the subdivision map of the Bishop Indian Reservation prepared in 1960.

Owens Valley Board has to justify approving Delvin's land assignment. The Bishop Tribe had Holmes Engineering re-survey the lots. Lot 27 is only about 18 feet wide. Lots 27 and 28 were combined to become lot 27 at 1.25 acres.

MOTION was made * * * and seconded * * * to send a letter to BIA clarifying the changing of lot numbers, and that the new map should be used. MOTION CARRIED.

The Board is not able to authenticate these minutes.

Concerning the use of the Holmes Survey map, appellee's decision states at page 5:

fn. 6 (continued)

persons within their jurisdiction. 25 U.S.C. § 1302(8) (1982). The precise status of the trustees as a tribal governing body is not entirely clear. The 1962 ordinance recites in the section entitled "Governing Body," "[T]he recognized governing body of the Owens Valley Indian Bands is the Owens Valley Board of Trustees." A November 14, 1968, opinion of the Regional Solicitor, Sacramento, states that in his opinion the powers of the trustees "are strictly limited to matters primarily concerned with the administration of assignments upon tribal land." See also n.1 supra. Even if the powers of the trustees are limited, however, they are governmental powers and therefore subject to the constraints of the Indian Civil Rights Act.

7/ When required to approve tribal actions, BIA has some responsibility for ensuring that the tribe has not violated the Indian Civil Rights Act. Santa Clara Pueblo v. Martinez, supra, at 66, n.22.

The "Holmes Survey" was prepared under the direction of the Superintendent of the Central California Agency for the purpose of superseding the 1960 BIA subdivision map. The 1960 subdivision map does not contain lot dimensions and because of the increased demand for land assignments and limited unassigned areas, it was apparently intended to subdivide the 1960 lots into smaller lots. [8/] Although the 1962 ordinance has not been amended to substitute the Holmes Survey in lieu of the 1960 survey, the Holmes Survey, with respect to the subdivision of the former assignment No. 85, was accepted by the Board of Trustees as is evidenced by their Resolution No. 84-03-004.

Resolution 84-03-004 states in pertinent part: "The Owens Valley Board of Trustees also recognizes the Holmes Survey map, and on December 6, 1983, at a duly called meeting of the Owens Valley Board of Trustees, the applications for land assignments of Delvin Kane and Clara Kane Angeli were approved according to the Holmes survey map."

Despite the fact that the Holmes Survey map was apparently prepared under the auspices of BIA, the question is whether or not the trustees have authority to substitute that map for the 1960 reservation map. Article II, section D, paragraph 10.a(2), of the 1962 ordinance states: "Assignments on the Bishop Reservation will be limited to two (2) lots per assignment as designated on the subdivision map of the Bishop Indian Reservation, prepared by the Bureau of Indian Affairs, dated January 1960."

According to Resolution 84-03-004, Delvin was assigned lots 27 and 28 as designated on the Holmes Survey map. The resolution states that lots 27 and 28 of the 1960 map were combined to form lot 27 of the Holmes map. Therefore, Delvin was apparently still assigned the equivalent of three lots as shown on the 1960 map, in violation of the 1962 ordinance.

Furthermore, the Board has carefully reviewed the 1939 and 1941 trust agreements and the 1962 ordinance. The ordinance was adopted by referendum vote of the three reservations. There are no provisions in the ordinance setting forth amendment procedures. In the absence of an amendment provision, it would normally be expected that amendments could be made only in the same manner as that through which the ordinance was initially adopted. The record does not show whether the use of the Holmes Survey map was presented to the voters for referendum vote, or was otherwise approved according to proper tribal procedures. Appellee's decision cannot be sustained in the absence of such proof.

8/ However, the record copy of the Holmes Survey map shows no divisions between lots 27, 28, 29, 30, and 31, and contains the notation, "Additional data needed for lots 27, 28, 29, 30, and 31."

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the November 16, 1985, decision of the Acting Deputy Assistant Secretary--Indian Affairs (Operations) is vacated and this case is remanded to the Bureau of Indian Affairs for further action consistent with this decision.

//original signed

Kathryn A. Lynn
Administrative Judge

I concur:

//original signed

Anita Vogt
Acting Chief Administrative Judge